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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 HORIZON HOUSE,  
11 Plaintiff,

12 v.

13 CAIN BROTHERS & COMPANY,  
14 LLC,

15 Defendant.

CASE NO. C11-1762JLR

ORDER DENYING MOTION TO  
TRANSFER VENUE

16 **I. INTRODUCTION**

17 Before the court is Defendant Cain Brothers & Company's ("Cain Brothers")  
18 motion to transfer venue to the Southern District of New York (Dkt. # 20). The court has  
19 considered the parties' memoranda and accompanying declarations filed in support and  
20 opposition to the motion. For the reasons stated below, the court DENIES the motion to  
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22

1 transfer venue.<sup>1</sup>

## 2 II. BACKGROUND

3 In 2005, Plaintiff Horizon House, a Washington non-profit corporation, entered  
4 into an “interest rate swap transaction” with Lehman Brothers Special Finance, Inc.  
5 (“LBSF”). (Siver Decl. (Dkt. # 25) ¶ 4.) The notional amount of the transaction was  
6 \$28,400,000.00. (*Id.*) LBSF subsequently collapsed in 2008 and filed for bankruptcy.  
7 (*Id.* ¶ 5.) Because the agreement between Horizon House and LBSF was ongoing at that  
8 time, Horizon House sought the advice of Cain Brothers to help terminate its arrangement  
9 with LBSF. (*Id.* ¶ 5.) Specifically, Horizon House’s Chief Financial Officer (“CFO”),  
10 Carl Siver, communicated with Katherine Kirchhoff, the Managing Director of Cain  
11 Brothers’ Los Angeles office. (*Id.* ¶ 8.) After those initial communications, Mr. Siver  
12 negotiated an agreement via e-mail and telephone from Seattle, Washington with Ms.  
13 Kirchhoff. (*Id.*) Under the agreement, Cain Brothers was to coordinate the termination  
14 of Horizon House’s financial arrangement with LBSF. (*Id.* ¶¶ 7-8.) Cain Brothers  
15 drafted, signed, and delivered an engagement letter to Mr. Siver in Seattle, who, after  
16 obtaining the consent of his colleagues, signed the agreement. (*Id.* ¶ 9.) The signed  
17 agreement contains no jurisdictional clause. (Comp. (Dkt. # 1-1) Ex. B.)

18 The instant dispute between Horizon House and Cain Brothers arose following the  
19 alleged failure of Horizon House, who was being advised by Cain Brothers, to properly  
20 terminate the financial arrangement with LBSF. (Comp. ¶¶ 10-21.) Under the original

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22 <sup>1</sup> No party has requested oral argument, and the court deems this motion appropriate for disposition without it.

1 contract between Horizon House and LBSF, the terminating party can select the date of  
2 termination. (Comp. Ex. A § 6.) According to Horizon House, Cain Brothers set the date  
3 of termination for October 23, 2008, but did not instruct Horizon House to forward the  
4 requisite documents to LBSF until the following day—causing the termination to fail.  
5 (Comp. ¶ 17.)

6 Horizon House subsequently filed claims against Cain Brothers for breach of  
7 contract, negligence, indemnification, and contribution in Washington State Court. (*Id.*  
8 ¶¶ 22-34.) Cain Brothers removed the action to this court. (Notice of Removal (Dkt. #  
9 1).)

10 Because Horizon House allegedly failed to correctly terminate the agreement with  
11 LBSF, LBSF filed a lawsuit against Horizon House seeking \$5.2 million in a separate  
12 action from the instant case. (Comp. ¶ 21.) That action is set to be mediated in  
13 bankruptcy court in the Southern District of New York. (Siver Decl. ¶ 18.)

### 14 **III. ANALYSIS**

#### 15 **A. Legal Standard**

16 Under 28 U.S.C. § 1404(a), a district court may transfer a civil action to another  
17 district where it might have been brought if it is for the parties' and witnesses'  
18 convenience and in the interest of justice. 28 U.S.C. § 1404(a). The court has broad  
19 discretion to decide when considerations of convenience and fairness warrant a transfer  
20 of venue. *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000).

21 In *Jones*, the Ninth Circuit articulated the factors that a court should consider  
22 when ruling on a motion to transfer venue under 28 U.S.C. § 1404(a). *Id.* at 498-99.

Under *Jones*, the court must weigh the following factors: “(1) the location where the relevant agreements were negotiated and executed, (2) the state that is most familiar with the governing law, (3) the plaintiff’s choice of forum, (4) the respective parties’ contacts with the forum, (5) the contacts relating to the plaintiff’s cause of action in the chosen forum, (6) the differences in the costs of litigation in the two forums, (7) the availability of compulsory process to compel attendance of unwilling non-party witnesses, . . . (8) the ease of access to sources of proof,” and (9) the public policy of the forum state. *Id.*

## **B. Motion to Transfer Venue**

The court has reviewed the factors articulated by the *Jones* court and concluded that the balance of the factors, as applied to the present case, do not favor transferring venue. Accordingly, for the reasons described below, the court denies Cain Brothers’ motion to transfer venue.

### **1. Location Where the Agreement Was Negotiated and Executed**

Horizon House and Cain Brothers negotiated their agreement outside of the Southern District of New York, and Horizon House executed the agreement in Seattle. As noted, Mr. Siver, Horizon House’s CFO, negotiated the agreement from Seattle with Ms. Kirchhoff of Cain Brothers, who was then based in Los Angeles. (Siver Decl. ¶ 8.) Moreover, Cain Brothers drafted and signed a copy of the agreement and presented it to Mr. Siver in Seattle, where it was executed.<sup>2</sup> (*Id.* ¶ 9.) Consequently, the court finds that

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<sup>2</sup> Cain Brothers states that the agreement was drafted and “executed” by Cain Brothers in New York. (Mot. (Dkt. # 20) at 13.) However, “execute” is a term of art meaning to “to bring a legal document into its final, legally enforceable form.” *Black’s Law Dictionary* (9th ed. 2009);

1 the location where the agreement was negotiated and executed weighs in favor of  
2 denying the motion to transfer venue.

### 3 **2. The State Most Familiar with the Governing Law**

4 Federal courts are equally equipped to apply distant state laws when the applicable  
5 law is not complex. *See, e.g., Barnstormers, Inc. v. Wing Walkers, LLC*, No. 09cv2367  
6 BEN (RBB), 2010 WL 2754249, at \*3 (S.D. Cal. July 9, 2010) (stating that a federal  
7 court in Texas would be equally adept at applying California law related unfair  
8 competition claims). Here, neither of the parties has asserted that the substantive law will  
9 be complex. Accordingly, regardless of the substantive state law applied in this case,  
10 both district courts are equally equipped to handle the case, and thus, this factor is  
11 neutral.

### 12 **3. The Plaintiff's Choice of Forum**

13 Horizon House's choice of forum weighs in favor in litigating this case in  
14 Washington. Courts in this district have affirmed that plaintiffs' choice of forum should  
15 be given great weight. *E.g., Nordquist v. Blackham*, No. C06-5433 FDB, 2006 WL  
16 2597931, at \*3 (W.D. Wash. Sept. 11, 2006) ("Ordinarily, a plaintiff's choice of forum is  
17 accorded substantial weight, and courts will not grant a motion under § 1404(a) unless  
18 the 'convenience' and 'justice' factors tip strongly in favor of transfer.") (citing *Piper*

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20 *see also In re Roberts*, 414 Fed. Appx. 761, 763 (6th Cir. 2011) (citing *Black's Law Dictionary*  
21 to define execute). Although Cain Brothers signed the document in New York, it was not  
22 "executed" until Mr. Siver had signed the contract in Seattle, thereby rendering it enforceable  
against all parties. Consequently, the agreement between Horizon House and Cain Brothers was  
"executed" by Mr. Siver in Seattle—not in New York.

1 *Aircraft Co. v. Reyno*, 454 U.S. 235, 257 (1981)); *Wang v. LB Intern Inc.*, No. C04-  
2 2475JLR, 2005 WL 2090672, at \*2 (W.D. Wash. Aug. 29, 2005) (“Courts usually will  
3 not disturb a plaintiff’s choice of forum unless the ‘convenience’ and ‘justice’ factors  
4 strongly favor venue elsewhere.”) (citing *Securities Investor Prot. Corp. v. Vigman*, 764  
5 F.2d 1309, 1317 (9th Cir.1985)).

6 Furthermore, the court finds that Cain Brother’s removal of this case to federal  
7 court does not diminish the weight given to Horizon House’s choice of forum. In *Oien v.*  
8 *Thompson*, No. 09-3068 (JRT/RLE), 2010 WL 2985032, at \*5 (D. Minn. July 26, 2010),  
9 the court found that removal of the case to federal court did not affect the weight given to  
10 the plaintiff’s choice of forum. *Id.* Specifically, the *Oien* court noted that a § 1404(a)  
11 analysis is primarily meant to evaluate “convenience factors based on geography,”  
12 meaning that a court’s analysis under § 1404(a) is largely based on factors that have little  
13 to do with whether a case was originally filed in state court. *Id.* That analysis is sound.  
14 The court, therefore, finds that in the present case the plaintiff’s choice of forum  
15 maintains the great weight it is commonly given, irrespective of the case’s removal from  
16 state court.

#### 17 **4. The Parties’ Contacts with the Forum**

18 Although both parties have contacts with the present forum, Horizon House has  
19 only limited contact with New York. Horizon House is a Washington non-profit  
20 corporation that conducts business solely within the state. (Siver Decl. ¶ 4.) Beyond the  
21 present case, the only contact the Horizon House has with New York is its upcoming  
22 mediation with LBSF. (*Id.* ¶ 19.)

1 In contrast, Cain Brothers, while headquartered in New York, regularly conducts  
2 business in Washington. (*Id.* ¶ 15.) Cain Brothers’ employees, including Ms. Kirchloff,  
3 traveled to Seattle to meet with Mr. Siver. (*Id.*) Additionally, Cain Brothers advertises  
4 on its website that it conducts business in Washington. (Resp. (Dkt. # 24) at 3-4 .)  
5 Although Cain Brothers has substantial contacts with New York, the court finds that  
6 transferring venue is not warranted based on Horizon House’s limited contacts with the  
7 Southern District of New York, and both parties’ contacts with the Western District of  
8 Washington.

9 **5. The Contacts Relating to the Plaintiff’s Cause of Action in the Chosen**  
10 **Forum**

11 The events underlying Horizon House’s cause of action occurred in several  
12 forums. As noted, the agreement at the center of the dispute between Horizon House and  
13 Cain Brothers was negotiated between parties who were located in Seattle and Los  
14 Angeles. (Siver Decl. ¶ 8.) Cain Brothers drafted and signed the agreement in New York  
15 and then sent it to Seattle for final approval. (Smith Aff. (Dkt. # 21) ¶ 9.) The agreement  
16 was then formally executed by Mr. Siver in Seattle. (Siver Decl. ¶ 9.)

17 For the purposes of § 1404(a), courts consider a number of varying factors when  
18 determining the “the situs” of the action, including where the contract was negotiated and  
19 executed, where business decisions causing the breach of contract took place, and where  
20 the alleged conduct was directed. *See Nike Inc. v. Lombardi*, 732 F. Supp. 2d 1146, 1159  
21 (D. Or. 2010) (stating that the situs of the action is where the contract in dispute was  
22 negotiated and where the “misrepresentations” were directed); *Hyatt Corp. v. Personal*

1 *Comm’n Indus.*, No. 04 C 4656, 2004 WL 2931288, at \*3 (N.D. Ill. Dec. 15, 2004)  
2 (stating that the situs of the action is where the contract was negotiated and executed and  
3 where business decisions causing the breach took place).

4 In the present case, the business decisions allegedly causing the breach of the  
5 contract were made in New York, while the contract was negotiated from and executed in  
6 Seattle. Additionally, the consequences of the alleged breach of contract were  
7 experienced in Washington. Thus, Horizon House’s cause of action relates more to the  
8 current forum than the Southern District of New York.

#### 9 **6. The Differences in the Costs of Litigation in the Two Forums**

10 The court finds that the net litigation costs would not be significantly reduced by  
11 transferring this case to New York. As this court noted in *Wang*, “the transfer must be ‘to  
12 a more convenient forum, not to a forum likely to prove equally convenient or  
13 inconvenient.’” *Wang*, 2005 WL 2090672, at \*1 (citing *Van Dusen v. Barrack*, 376 U.S.  
14 612, 645-46, (1964)).

15 Here, transferring the venue to New York would only shift the costs from Cain  
16 Brothers to Horizon House, not reduce them. The two parties are based on opposite sides  
17 of the country. (Siver Decl. ¶ 3; Smith Aff. ¶ 5.) Furthermore, both point to witnesses  
18 who would be forced to travel across the country regardless of where the case is tried.  
19 (Mot. at 9-10; Resp. at 18.) Specifically, Horizon House lists six primary witnesses: Bob  
20 Anderson, Horizon House’s Chief Executive Officer who resides in Seattle; Carl Siver,  
21 Horizon House’s CFO who also resides in Seattle; Katherine Kirchoff, Cain Brothers’  
22 Managing Director who is in Los Angeles; Chris Everett, Cain Brothers’ Senior Vice



1 President who is in New York; Scott Smith, Cain Brothers' Managing Director who is a  
2 Florida resident who periodically works in New York; and Irene Fischer, a Seattle-based  
3 attorney who assisted Horizon House with its financial transactions. (Resp. at 18.)

4 Beyond the witnesses cited by Horizon House, Cain Brothers lists nine additional  
5 non-party witnesses located in New York.<sup>3</sup> The court, however, finds the value of these  
6 witnesses to be minimal. Of the nine witnesses listed by Cain Brothers, eight are  
7 allegedly connected to the present case solely through their involvement with the dispute  
8 between Horizon House and LBSF. Furthermore, Cain Brothers states that seven of the  
9 nine witnesses will discuss the same topics—the reasonableness of any settlement  
10 between Horizon House and LBSF and the adequacy of Horizon House's defense. (Mot.  
11 at 9-10.) Accordingly, it is reasonable to conclude that some of this testimony will be  
12 duplicative and unnecessary. Thus, it appears the actual number of witnesses needing to  
13 travel between forums is more balanced than Cain Brothers asserts. Therefore, a transfer  
14 of venue to New York would largely shift costs, rather than reduce them.

15 Finally, although Cain Brothers makes the legitimate argument that Horizon  
16 House's ongoing dispute with LBSF in New York may lessen the financial burden put on  
17 Horizon House by litigating this case in New York, it does not appear that such a

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20 <sup>3</sup> Cain Brothers lists the following non-party witnesses: Denis Forster (Horizon House's  
21 counsel of record in its dispute with LBSF and the present case), Courtney Jenkins (LBSF), Seth  
22 Konheim (LBSF), Cherry Liang (LBSF), Bill Lee (LBSF), Locke R. McMurry (LBSF's contact  
in relation to the dispute with Horizon House), Lawrence Brandman (LBSF's contact in relation  
to the dispute with Horizon House), Richard Levine (counsel for LBSF in its dispute with  
Horizon House), and Sujun Trivedi (counsel for LBSF in its dispute with Horizon House). (Mot.  
at 9-10.)

1 reduction would be significant. There is no assurance that the mediation, or potential  
2 litigation, between Horizon House and LBSF will coincide temporally with the present  
3 case. Furthermore, Cain Brothers has not asserted that that the two cases are likely to be  
4 consolidated. The court thus finds that Horizon House's dispute with LBSF will not  
5 significantly reduce the costs of litigating this case in New York. Even assuming this  
6 factor did weigh in favor of transfer, it does not, on balance, overcome all of the other  
7 factors that weigh against transfer.

#### 8 **7. The Availability of Compulsory Process to Compel Attendance of** 9 **Unwilling Witnesses**

10 In the present case, there are a number of non-party witnesses who reside in  
11 several locations across the country and outside of the subpoena power of either the  
12 Southern District of New York or the Western District of Washington. (Mot. at 9-10;  
13 Resp. at 18.) Because there is no one district that commands subpoena power over the  
14 vast majority of non-party witnesses, the court finds that transferring the case to New  
15 York would not increase the number of witnesses in attendance.

#### 16 **8. The Ease of Access to Sources of Proof**

17 Transferring venue in this case would not significantly alter the parties' access to  
18 evidence. Beyond the availability of witnesses, both parties focus on the location of  
19 pertinent documents. Cain Brothers stresses that a significant number of documents  
20 relating to the dispute between LBSF and Horizon House are located in New York.  
21 (Mot. at 11-12.) As Cain Brothers admits, however, the location of documents is not  
22 dispositive because documents "can be transported with relative ease." (Reply (Dkt. #

27) at 13.) Furthermore, Horizon House highlights the fact that many relevant documents are located in Washington and California. (Resp. at 22.) Thus, the court finds that the location of documents does not favor a transfer of venue.

#### **9. The Public Policy of the Forum State**

Public policy considerations favor litigating this case in Washington. Forum states have an interest in providing redress for their injured residents. *See Gordy v. Daily News, L.P.*, 95 F.3d 829, 836 (9th Cir. 1996) (noting that “California maintains a strong interest in providing an effective means of redress for its residents tortiously injured” in a case determining personal jurisdiction). Furthermore, the median length of time to trial is over 12 months shorter in this district as compared to the Southern District of New York. (Resp. at 24.) Together, these facts weigh in favor of litigating this case in Washington.

#### **10. Weighing the *Jones* Factors**

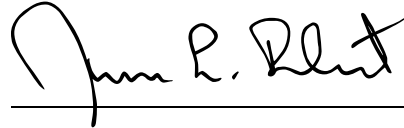
The court, having considered all the factors promulgated by the *Jones* court, finds that transfer of venue is not warranted. The location where the agreement was negotiated and executed, Horizon House’s choice of forum, the respective parties’ contacts with the chosen forum, the contacts relating to Horizon House’s cause of action, and the public policy of the forum state all weigh against transferring venue. Only one factor—the differences in costs in of litigation in the two forums—arguably weighs in favor of transfer. That factor alone, however, does not outweigh the others. Accordingly, the Western District of Washington is the proper forum for this case.

#### **A. CONCLUSION**

For all of the reasons stated above, the court DENIES Defendant’s motion to

1 transfer venue (Dkt. # 20).

2 Dated this 7th day of February, 2012.

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5 JAMES L. ROBART  
6 United States District Judge  
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